

IN THE SUPREME COURT OF THE STATE OF NEVADA

LONZELL HAY,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
AND HOWARD SKOLNIK, DIRECTOR,
Respondents.

No. 59315

FILED

JAN 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angel*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a civil rights action. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

Appellant filed a complaint in the district court alleging that respondents exhibited a deliberate indifference to his serious medical need in violation of the Eighth Amendment of the United States Constitution by failing to provide him with surgery to remove keloids from his earlobes. On review of the record, we conclude that the district court did not err in granting summary judgment to respondents. Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (explaining that after a de novo review, this court will affirm a summary judgment if the record, viewed in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law). In particular, in support of their summary judgment motion, respondents submitted evidence demonstrating that appellant was seen by two doctors who each concluded that surgery was not a viable treatment for appellant. Rather than present evidence supporting his contention that surgery was a legitimate

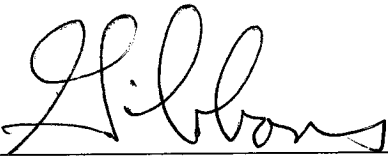
option, appellant requested a hearing to allow the district court to see the keloids firsthand.¹ It is not the role of the district court, however, to determine, without medical evidence, the appropriate treatment for a party's medical conditions.

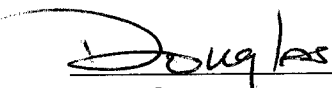
In the absence of evidence supporting his contentions, appellant failed to raise any genuine issue of material fact as to whether surgery was a viable treatment for his keloids, and thus, the district court did not err in granting summary judgment to respondents. See id. at 731-32, 121 P.3d at 1031 (explaining that in order to defeat a summary judgment motion, the nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial" and that "[a] factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party"); see also Estelle v. Gamble, 429 U.S. 97, 104-06 (1976) (explaining that an inmate's claim for inadequate medical care only constitutes cruel and unusual punishment under the Eighth Amendment when a state

¹On appeal, appellant asserts that the district court erred by failing to hold a hearing on the summary judgment motion. A district court, however, is not required to hold a hearing on a summary judgment motion because the parties are provided with the opportunity to present their arguments in writing and summary judgment is only proper when a party is entitled to judgment as a matter of law. See NRCP 77(b) (providing that the district court may conduct acts or proceedings, other than trials, in chambers); Madison Nat'l Life v. District Court, 85 Nev. 6, 9, 449 P.2d 256, 258 (1969) (providing that "[a]ny issue of law or other motion may be [an] in chamber matter and may be heard or submitted as authorized in NRCP 77(b)"); see also Lake at Las Vegas Investors v. Pacific Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991) (explaining that a district court's refusal to grant oral argument on a summary judgment motion does not constitute reversible error when the parties have had the opportunity to present their views in a written brief to the court).

actor is willfully and deliberately indifferent to a serious medical need).
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Michael Montero, District Judge
Lonzell Hay
Attorney General/Carson City
Pershing County Clerk